

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED CITY OF LYNNWOOD SHORELINE MASTER PROGRAM

SMP Submittal Accepted: August 23rd, 2011, Ordinance No.2890
Prepared by David Pater, on November 9th, 2011

Brief Description of Proposed Amendments:

The City of Lynnwood is proposing a new shoreline master program (SMP). This is Lynnwood's first shoreline master program. Lynnwood's shoreline is limited to 700 feet of Puget Sound marine shoreline. The City's shoreline consists of the city sewage treatment plant site and the BNSF railroad right of way. The aquatic area consists of city and privately owned tidelands. The upland shoreline environment is designated high Intensity; marine waters designated aquatic.

The Lynnwood SMP will be a standalone land use program.

FINDINGS OF FACT

Need for SMP: This new SMP is needed to address the need for shoreline policies and regulations which reflect the current level of environmental protection and land use management provided by city comprehensive plan elements, and other applicable city code. It also needs to meet the State Shoreline Master Program Guidelines (WAC 17-26) and comply with the statutory deadline for comprehensive update of the SMP (RCW 90.58.080).

SMP History, Review Process: The proposed SMP originated from a State Shoreline Master Program Update Grant that began in October 2005. One Planning Commission meeting was held on November 10, 2005. Two Planning Commission public hearings on November 16, 2006 and October 28th 2010. One City Council public hearing and meeting May 23rd, 2011. Affidavits of publication provided by the City indicate notices of the hearings were published.

With passage of Ordinance No. 2890, on May 23, 2011, the Lynnwood City Council adopted the 2011 SMP and authorized staff to forward the proposed SMP to Ecology for approval.

The proposed SMP was received by Ecology for state review on August 16th, 2011, and verified as complete on August 23rd, 2011. Notice of the State comment period was distributed to state task force members and interested parties identified by the City of Lynnwood on September 27, 2011, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on September 30th, 2011 and continued through October 31st, 2011. Ecology staff determined a public hearing was not necessary. No public comments were received by Ecology.

Consistency with Chapter 90.58 RCW: The proposed comprehensive amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence (see

above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City of Lynnwood.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP on October 7th, 2010; notice of the SEPA determination was published in the Everett Herald on October 9th, 2010. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City in support of the comprehensive SMP:

These supporting documents include:

- *an October 2005 public participation plan,*
- *a December 2006 shoreline inventory and characterization,*
- *a October 2010 cumulative impacts analysis,*
- *a December 2006 shoreline use analysis, and*
- *an October 2010 shoreline restoration plan*

Summary of Issues Raised During The Public Review Process: The draft SMP review process brought out a few issues that required further discussion and analysis. There were no public comments provided either through the local or Ecology public review process.

Utilities: City Public Works staff were particularly concerned about the SMP having workable regulations that would allow the City sewage treatment plant to do maintenance and repair work and other site modifications as needed. Ecology met with city planning and public works staff to help develop a set of primary utility facilities policies and regulations that were also consistent with the utilities section of the State SMP guidelines

Railroad: City Planning staff felt that the SMP needed to recognize the existence and continuation of the BNSF railroad with the City shoreline. The railroad right of way consists of the first 100 feet of upland shoreline from the ordinary high water mark. Relevant language from Edmonds draft SMP helped with crafting railroad related standards in Lynnwood’s transportation facilities section.

Public Access: City Public Works Department felt that public access to the sewage treatment plant site (entire upland city shoreline) should be restricted due to health and safety issues. BNSF restricts access to the railroad right of way. City and Ecology were in agreement that access should be restricted and the best way to address public access is

for the public works staff to conduct plant tours and integrate information about the shoreline environment into the tours. This became an SMP public access policy.

Critical Areas: During the draft review process City and Ecology staff considered various options for integrating Lynnwood's critical areas regulation into the SMP. Further analysis revealed that only a few critical areas regulations applied in Lynnwood's limited shoreline. These standards were directly imbedded into the SMP.

Summary of Issues Identified by Ecology as Relevant To its Decision:

All Ecology draft SMP comments have been addressed.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted, Ecology concludes that the City of Lynnwood's SMP proposal, is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the Lynnwood's existing critical areas ordinance and achieves no net loss of shoreline ecological functions.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City of Lynnwood has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City of Lynnwood has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City of Lynnwood has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City of Lynnwood has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the Lynnwood's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3) (a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City of Lynnwood has chosen not to exercise its option pursuant to RCW 90.58.030(2) (f) (ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment is consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days after Ecology's final action approving the SMP.